

1 AARON D. FORD
2 Attorney General
HEATHER D. PROCTER (Bar. No 8621)
3 Chief Deputy Attorney General
State of Nevada
4 Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
5 Telephone: (775) 684-1271
Fax: (775) 684-1108
6 hdprocter@ag.nv.gov
Attorney for Respondents

7

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 AVRAM VINETO NIKA,

Case No. 3:09-cv-00178-JCM-WGC

11 Petitioner,

**STIPULATED FOURTH EXTENSION OF
TIME FOR COMPLIANCE WITH
AMENDED JUDGMENT IN A CIVIL CASE
(ECF NO. 201)**

12 vs.

13 TIMOTHY FILSON, *et al.*,

14 Respondent.

15 In June 2019, this Court granted in part petitioner Avram Viento Nika's (Nika) second-amended
16 federal habeas petition, granting relief on the penalty phase of trial and denying relief as to all other
17 claims. ECF No. 186 at 95. The Court further granted Nika a certificate of appealability on four
18 grounds and stayed the judgment pending conclusion of appellate review or the expiration of time to
19 seek such review. *Id.* at 96.

20 Respondents did not appeal, but Nika did. ECF No. 190.

21 In October 2019, this Court granted Nika's motion to alter or amend the judgment in part,
22 expanding the certificate of appealability to include an additional ground. ECF No. 200 at 3.

23 On October 4, 2019, this Court issued an amended judgment. ECF No. 201. In that judgment,
24 the Court ordered:

25 IT IS FURTHER ORDERED AND ADJUDGED that Respondents shall
26 either (1) within 60 days from the date of this order, vacate Petitioner's
death sentence and impose upon him a non-capital sentence, consistent
with law, or (2) within 60 days from the date of this order, file a notice of
the State's intent to grant Petitioner a new penalty-phase trial, and, within
180 days from the date of this order, commence jury selection in the new
penalty-phase trial.

1 ...

2 IT IS FURTHER ORDERED AND ADJUDGED that the judgment in
 3 this action will be stayed pending the conclusion of any appellate or
 4 certiorari review in the Ninth Circuit Court of Appeals or the United
 5 States Supreme Court, or the expiration of the time for seeking such
 6 appellate or certiorari review, whichever occurs later.

7 *Id.*

8 Ultimately, the Ninth Circuit affirmed this Court's order denying Nika's appeal. ECF No. 206.
 9 The Court denied rehearing and rehearing *en banc* and issued mandate on December 28, 2022. ECF No.
 10 209. This Court ordered the mandate be spread upon the court's records on March 3, 2023. ECF No.
 11 210.

12 Pursuant to this Court's amended judgment, the matter remained stayed until the conclusion of
 13 appellate or certiorari review, or the expiration of time to seek the same. Nika had until March 20,
 14 2023, to seek certiorari with the United States Court of Appeals. S. Ct. R. 13. He chose not to do so.

15 Once the period for seeking certiorari ended, Respondents had 60 days, until May 19, 2023, to
 16 file notice with the Court that the Washoe County District Attorney chose to either vacate Nika's death
 17 sentence and impose a non-capital sentence or intended to hold a new penalty-phase trial. *See* ECF No.
 18 201. If the District Attorney chose to hold a new penalty phase, they had 180 days, or September 16,
 19 2023, within which to commence jury selection.

20 This Court approved the parties' first stipulation to extend the time for execution of the
 21 judgment by sixty (60) days to July 18, 2023. ECF No. 216. And approved a second stipulation to
 22 extend the time for execution of the judgment by an additional thirty (30) days to August 17, 2023. ECF
 23 No. 220. And the third stipulation for an additional one-hundred twenty (120) days to December 15,
 24 2023.

25 Since the last stipulation, the prosecutor sought appointment of counsel and on October 30,
 26 2023, the Second Judicial District Court appointed the Washoe County Public Defender (WCPD) to
 27 represent Nika. Shortly thereafter, the WCPD filed a motion to be relieved as counsel. On December
 28 11, 2023, the court granted the WCPD's request and appointed the Alternate Public Defender (APD) to
 29 represent Nika. The APD will require time to get up-to-speed on the case, and the parties will require
 30 time to enter into new discussions and negotiations. In addition, the amended judgment specifies that

1 the prosecution must either “impose” a new non-capital sentence or file notice of their intent to pursue a
2 new penalty hearing before the designated date. Given the recent appointment of new counsel, pending
3 negotiations, and either entry of the new sentence or a decision to pursue a new penalty hearing, the
4 parties ask this Court to extend the judgment deadline by one-hundred twenty-six (126) days.¹

5 IT IS HEREBY STIPULATED AND AGREED that:

6 1. Undersigned counsel for Nika conferred and attempted to seek a resolution with Washoe
7 County District Attorney Luke Prengaman regarding this case until August 2023. As they could not
8 reach an agreement, Mr. Prengaman reached out to the WCPD chief to set a hearing. Pursuant to the
9 state court docket, on October 26, 2023, Mr. Prengaman filed a request to appoint the WCPD and to set
10 a hearing. The WCPD entered an appearance, but shortly thereafter filed a motion to be relieved as
11 counsel. The district court granted that motion on December 11, 2023, and appointed the APD.

12 2. The parties agreed to ask this Court to extend the deadline by an additional one-hundred
13 twenty-six (126) days to permit continued discussions and appropriate hearings. Respondents must

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

¹ A one-hundred twenty (120) day extension would fall on a Saturday.

1 comply with the judgment by Friday, April 19, 2024, by filing notice with the Court that the Washoe
2 County District Attorney either imposed a non-capital sentence consistent with law or intends to grant a
3 new penalty phase of trial to commence by Wednesday, October 16, 2024.

4 DATED December 12, 2023_

DATED December 12, 2023

5 RENE L. VALLADRES
6 Federal Public Defender

AARON D. FORD
Nevada Attorney General

7
8 /s/ Heather Fraley
Heather Fraley (Bar No. 24050621)
9 Assistant Federal Public Defender
10 411 E. Bonneville Ave. Ste. 250
Las Vegas, NV 89101
11 *Attorney for Petitioner*

/s/ Heather D. Procter
Heather D. Procter (Bar No. 8621)
Chief Deputy Attorney General
100 N. Carson St.
Carson City, NV 89701
Attorney for Respondents

12
13 **ORDER**

14 IT IS SO ORDERED.

15 Dated December 13, 2023.

16
17 
18 JAMES C. MAHAN
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 12th day of December, 2023, I served a copy of the foregoing **STIPULATED FOURTH EXTENSION OF TIME FOR COMPLIANCE WITH AMENDED JUDGMENT IN A CIVIL CASE (ECF NO. 201)**, by U.S. District Court CM/ECF electronic filing to:

Heather Fraley
Assistant Federal Public Defender
411 East Bonneville Avenue, Suite 250
Las Vegas, NV 89101
Attorneys for Petitioner

/s/ Amanda White